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Attorneys for Defendant  
EDUCATIONAL CREDIT MANAGEMENT CORPORATION

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

JEFFREY A. NEEDELMAN,

Plaintiff,

vs.

PENNSYLVANIA HIGHER EDUCATION  
ASSISTANCE AUTHORITY dba  
AMERICAN EDUCATION SERVICES,  
KEY BANK N.A.; & EDUCATIONAL  
CREDIT MANAGEMENT CORPORATION)

Defendants.

) Case No.: 08- CV 0442 L RBB

)  
) Honorable M. James Lorenz

) **NOTICE OF MOTION TO DISMISS**  
) **PURSUANT TO FRCP 12(b)(6) BY**  
) **DEFENDANT EDUCATIONAL CREDIT**  
) **MANAGEMENT CORPORATION**

) **Hearing**

) Date: June 30, 2008

) Time: 10:30 a.m.

) Courtroom: "14"

TO THE HONORABLE M. JAMES LORENZ, UNITED STATES DISTRICT  
JUDGE, PLAINTIFF JEFFERY A. NEEDELMAN AND ALL PARTIES OF  
INTEREST:

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2 PLEASE TAKE NOTICE that on June 30, 2008 at 10:30 a.m., or as soon  
3 thereafter as this matter may be heard, a hearing will be held before the Honorable  
4 M. James Lorenz, United States District Judge, in his courtroom located at the U.S.  
5 Courthouse, 880 Front Street, San Diego, California 92101-6998, Courtroom 14, on  
6 the Motion to Dismiss Plaintiff's Complaint for: 1) Declaratory Relief 2)  
7 Reimbursement for: (1) Failure to State a Claim for Which Relief may be Granted  
8 ("Motion"), filed by Defendant EDUCATIONAL CREDIT MANAGEMENT  
9 CORPORATION. ("ECMC").

10 This Motion is based on this Notice of Motion and Motion, the Memorandum  
11 of Points and Authorities filed concurrently herewith, the pleadings and records on  
12 file with respect to this bankruptcy adversary proceeding and such other and further  
13 evidence and oral argument as may be presented to the Court at the hearing.

14 PLEASE TAKE FURTHER NOTICE that pursuant to Local District Rule 7.1,  
15 parties who wish to oppose the Motion shall, not later than fourteen (14) days prior to  
16 the date of the hearing, file with the Clerk of the United States District Court, located  
17 at 880 Front Street, San Diego, California 92101-6998, and serve on counsel for  
18 ECMC, a brief but complete written statement of all reasons in opposition to the  
19 Motion, and an answering memorandum of points and authorities and copies of all  
20 documentary evidence on which the responding party intends to rely. In accordance  
21 with Local District Rule 90137.1, papers not timely filed and served may be deemed  
22 by the Court as consent to the granting of the Motion.

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1 WHEREFORE, ECMC prays that this court grant its Motion to Dismiss and for  
2 such other and further relief as the Court deems just and proper.

3  
4 Respectfully submitted,

5 TIMOTHY P. BURKE & ASSOCIATES  
6 A PROFESSIONAL CORPORATION

7 DATED: May 15, 2008

8 By: /S/ TIMOTHY P. BURKE

9 TIMOTHY P. BURKE  
10 Attorneys for Defendant  
11 Educational Credit Management  
12 Corporation  
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